

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
FTX Trading Ltd., et al.,)	Case No. 22-11068 (JTD)
)	
Debtors.)	(Jointly Administered)

via CM/ECF and/or email

NOTICE OF OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF ORDERS

TO: (a) Proposed Counsel for the Debtors and Debtors-in-Possession, (b) Counsel for Official Committee of Unsecured Creditors, and (c) the U.S. Trustee.

On December 29, 2022, I, John Mallon (the “Objector”), had delivered via personal courier to be filed an objection to the *Motion of Debtors for entry of orders (i)(a) Approving bid procedures, stalking horse protections and the form and manner of notices for the sale of certain businesses, (b) Approving assumption and assignment procedures and (c) Scheduling auction(s) and sale hearing(s) and (ii)(a) Approving the sale(s) free and clear of liens, claims, interests and encumbrances and (b) Authorizing assumption and assignment of executory contracts and unexpired leases*, filed on December 15, 2022 (the “Motion”)¹.

/s/ John Mallon
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Pro se creditor

¹ D. I. 233 in the Proceedings.

Copy of objection

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FTX Trading Ltd., et al.,)	Case No. 22-11068 (JTD)
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Debtors.)	(Jointly Administered)

OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF ORDERS

I, John Mallon (the “**Objector**”), a customer and creditor of the Debtors, hereby respond and object to the *Motion of Debtors for entry of orders (i)(a) Approving bid procedures, stalking horse protections and the form and manner of notices for the sale of certain businesses, (b) Approving assumption and assignment procedures and (c) Scheduling auction(s) and sale hearing(s) and (ii)(a) Approving the sale(s) free and clear of liens, claims, interests and encumbrances and (b) Authorizing assumption and assignment of executory contracts and unexpired leases*, filed on December 15, 2022 (the “**Motion**”)².

1. Factual background

Objector was a customer of the Debtors prior to their filing for Chapter 11 reorganization protection in this court on November 11, 2022 (the “**Proceedings**”). For most of Objector’s time as a customer of the Debtors, their liability to Objector was in the form of a cash balance held on the FTX.com international trading platform (the “**Platform**”). Prior to the Proceedings, Objector used their entire cash balance to buy a product known as tokenized stocks (“**Tokens**”) on the Platform. The Debtors’ documentation for Tokens provided, *inter alia*, that Tokens are backed by the underlying shares upon which the Token is issued (“**Shares**”), brokered by Swiss entity Canco GmbH (now known as FTX Switzerland GmbH; debtor #53 in the Proceedings, “**FTX Switzerland**”) and custodied by FTX Switzerland with an undisclosed third party. In order to be eligible to purchase Tokens, customers on the Platform were required to complete an additional know-your-customer (“**KYC**”) application to

² D. I. 233 in the Proceedings.

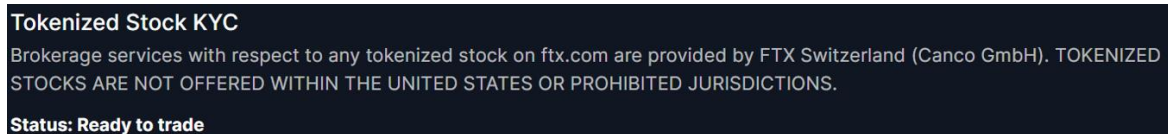
become a customer of the broker of the Tokens and the Shares: FTX Switzerland, which is a 100%-owned subsidiary of FTX Europe AG (debtor #41 in the Proceedings, “**FTX Europe**”), formerly known as Digital Assets DA AG. It is FTX Europe, among other entities which are proposed to be sold in the Motion. This objection concerns only the proposed sale of FTX Europe, including its assets, and its subsidiaries and their assets (the “**FTX Europe Business**”).

2. The Objection

This objection concerns the Debtors’ attempt in the Motion to seek approval for the sale of the FTX Europe Business, free and clear of liens, claims, interests, and encumbrances, “which may involve a sale of 100% of the interests in FTX Europe held by FTX Trading or sales of stock and/or assets of FTX and/or *its subsidiaries*”³ (the “**Sale**”).

Objector submits that there may exist a customer and debtor/creditor relationship between FTX Switzerland and customers of the Platform who submitted the enhanced KYC application to become customers of FTX Switzerland, whose applications were approved by the Debtors, and who then went on to purchase Tokens (“**Token Customers**”). Objector is part of an informal group of Token Customers and submits there are many others in a similar position as Objector.

Confirmation on the Identity Verification/KYC section of Objector’s account on the Platform (screenshot as of November 9, 2022):



The screenshot shows a dark background with white text. At the top, it says "Tokenized Stock KYC". Below that, it states: "Brokerage services with respect to any tokenized stock on ftx.com are provided by FTX Switzerland (Canco GmbH). TOKENIZED STOCKS ARE NOT OFFERED WITHIN THE UNITED STATES OR PROHIBITED JURISDICTIONS." At the bottom, it says "Status: Ready to trade".

Objector further submits that due to the representations made to customers by Debtors regarding Tokens *infra*, Token Customers may have a secured claim over the Shares held by FTX Europe or FTX Switzerland.

³ Page 6 of the Motion.

Therefore, Objector respectfully requests that the proposed sale of the FTX Europe Business be paused pending a review of the FTX Europe affairs and their assets, as well as a review of the potential customer relationships/creditor claims, in order to avoid the assets backing customers'/creditors' claims being sold off free of the claims of those customers/creditors.

3. The Documentation

The Debtors maintained informational documentation covering Tokens ("**Documentation**")⁴, as part of its helpdesk policies. To the best of Objector's knowledge, this was the closest document provided by Debtors resembling a terms of service or agreement regarding full Tokens. A copy of the version which was current at the time the Proceedings were filed has been filed with this objection and is available online via the link at footnote 3. It is submitted that in the Documentation, the Debtors made certain representations about Tokens which are relevant to this objection.

1. Outlining breakdown of customer relationship, and that the brokerage is provided by FTX Switzerland, not FTX Trading Ltd:

How is this trading regulated?

Canco GmbH (FTX Switzerland) is an authorized financial intermediary permitted to offer these products. All FTX users who trade tokenized stocks may also become customers of FTX Switzerland, and pass through its KYC and compliance. Furthermore, all trading activity may be monitored for compliance by FTX Switzerland. FTX Switzerland custodies the equities at a third party brokerage firm. Canco GmbH (FTX Switzerland), instead of FTX Trading Ltd, FTX Digital Markets Ltd or other affiliates, provides the brokerage services.

⁴ <https://web.archive.org/web/20221027042145/https://help.ftx.com/hc/en-us/articles/360051229472-Tokenized-Stocks>.

2. Outlining that applicants for this service become customers of FTX Switzerland:

How do you trade tokenized stocks on FTX?

Mechanically, you trade tokenized stocks the same way you trade other spot markets. Fees, API calls, and GUI instructions are all the same.

In order to register for tokenized stocks trading on FTX, go to <https://ftx.com/tokenized-equities-kyc> to submit your KYC information to and become a customer of Canco GmbH (FTX Switzerland).

Following that, you may be asked to answer some information on your trading experience.

3. Outlining that the tokens are backed by shares and custodied by FTX Switzerland, and that tokens can be redeemed for the underlying shares:

What exactly is traded on FTX?

FTX itself lists tokens on the equities. For instance, ftx.com/trade/TSLA/USD is a market to trade tokens on Tesla stock.

These spot tokens are backed by shares of Tesla stock custodied by FTX Switzerland. They can be redeemed with FTX Switzerland for the underlying shares if desired. In the future, there may be other ways to withdraw the tokens from FTX. If you are interested in getting set up to redeem the stocks, please email support.

4. Describing situations based on the rights (e.g. right to receive dividend, and right to vote) which would suggest ownership of underlying shares by FTX Switzerland:

How are corporate actions handled?

Holding tokenized stocks on FTX entitles users to dividends, etc. of the underlying stock. FTX will pursue all reasonable actions to have the tokens on FTX reflect the corporate actions of the underlying equities, including through dividends and stock splits. It is not anticipated that the shares will exercise their voting rights but FTX Switzerland may do so in its discretion.

For US listed products, the dividends on FTX will be paid out at 2pm HKT on ex-date. At this time US equities are closed, and it's between after-hours and pre-open trading.

We will continue to investigate but for now dividends will be paid out *gross* of tax, and it will be up to each user to understand the tax consequences of any dividends they receive.

Dividends will generally be credited to your account around 2pm HKT.

In the event of an unusual circumstance we will endeavor to have a fair and reasonable resolution.

Objector submits that due to the way in which the relationship between Token Customers and FTX Switzerland was established and due to the representations made in the Documentation *supra* upon which that relationship may have been entered into, there may be “liens, claims, interests and encumbrances” on the FTX Europe Business.

Objector submits that Token Customers may be secured creditors of FTX Switzerland and/or FTX Europe, because a transfer of money was made to the Debtors based on a representation by the Debtors that there was an underlying security backing the Token for which the money was transferred.

4. Outcome Sought

Objector submits that any Shares or other assets held by FTX Switzerland or FTX Europe should be made available to settle Token Customers’ claims prior to the Sale.

If the Shares are with a third party custodian per the Documentation, these Shares should be redeemed by FTX Switzerland or FTX Europe to be made available to settle Token Customers’ claims prior to the Sale, or arrangements should be made with Token Customers so that the proceeds of the liability

owed to FTX Switzerland or FTX Europe by this custodian or other relevant third parties should be made available to settle Token Customers' claims.

Respectfully submitted,

/s/ John Mallon

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